

## **REMARKS**

This Response is identical to the response file on January 28, 2005 except the status identifier of claim 2 has been changed as required by the examiner. Applicants have cancelled withdrawn claims 13-16, 18-68, 75 and 77-89.

### **Declaration**

Applicants attach hereto a new declaration executed by Moosa Mohammadi.

### **Request for Clarification**

The Examiner is correct in stating that FGF1 of Figure 17 is SEQ ID NO: 17.

### **Sequence Listing**

Applicants have complied with the requirements for a sequence listing with the submission of the amendment and diskette submitted on October 16, 2002. The specification was amended to bring Figures 4, 15, 17, 20 and 25 in compliance with the sequence listing rules.

### **Claim Objections**

The objected claims have been amended rendering this rejection moot.

### **Claim Rejections, 35 USC § 112, Indefiniteness**

The claims have been amended to render moot the rejection under 35 USC § 112 for indefiniteness.

### **Claim Rejections, 35 USC § 101/112, Utility and Enablement**

The Examiner has stated at page 12 of the Office Action dated October 28, 2004 that the specification is enabled for "a crystal of a purified polypeptide of SEQ ID NO: 1 co-crystallized with the FGF-1 of SEQ ID NO: 17 having tetragonal space group symmetry P1 and the unit cell dimensions of  $a=62.55\text{\AA}$ ,  $b=64.14$ ,  $\alpha=93.40^\circ$ ,  $\beta=111.17^\circ$ , and  $\gamma=97.18^\circ$ ." Applicants have amended claim 1 to recite the subject matter that the Examiner has found to

be enabled, thereby overcoming the outstanding rejection for lack of enablement. Moreover, the crystals of the present invention can be used to generate data for studies of the FGF receptor, which play a role in diseases related to cell proliferation. (See, *inter alia*, pages 1-3 of the specification.) The use of data for molecular modeling is a specific and substantial utility that makes the usefulness of the present invention immediately apparent to those familiar with the technical field of the invention. See MPEP 2107.01. This contrasts with *Brenner v. Manson*, 383 U.S. 519 (1966), where the chemical intermediate at issue was used to synthesize a compound with no known biological or other function. In the present invention, the link between the FGF receptor and cell proliferation is well established, thereby creating a specific and substantial utility. Applicants also note that in US Patent number 5,942,428, sharing common inventors with the present application, the PTO has already found claims to a crystal composition to have utility, further evidencing that the present invention has a specific and substantial utility immediately apparent to those of skill in the art.

**Claim Rejections, 35 USC § 102/103**

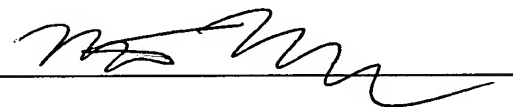
The present claim amendments overcome the prior art rejections of record by reciting subject matter that is not taught or suggested in the prior art.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application. The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date April 29, 2005

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5300  
Facsimile: (202) 672-5399

By 

Matthew E. Mulkeen  
Attorney for Applicants  
Registration No. 44,250